CASE TRANSLATION: BELGIUM

CASE CITATION:
AR n° 2002/71

NAME AND LEVEL OF COURT:
Ghent Labour Court of Appeal (Bruges department, 7th chamber)

DATE OF DECISION: **23 September 2003**

Facts

On 9 September 1994, the parties concluded a written employment contract for an indefinite term, which stipulated the claimant would start working as an executive for the defendant on September 12th. In an addendum to this first employment contract, the parties agreed on 1 September 1997 that the claimant would be sent to BI in Barcelona for a period of three years, starting on 1 December 1997 and ending on 30 November 2000.

According to the defendant, both parties agreed to terminate the expatriation and the employment agreement with BI early. In conforming to article 3 of the addendum to the first employment contract, the employment agreement with B then automatically re-entered into force. The claimant, however, contests such a termination was agreed upon.

By registered letter of 10 April 2000, the defendant terminated the employment agreement for urgent reasons, which were described as the persistent refusal of the claimant to resume his function as 'key account manager Cabele' in the office in Z by 10 April 2000 at the latest. The claimant contests this discharge for urgent reasons and demands compensation for breach, holiday pay, a pro rata end-of-year bonus and compensation for a non-compete clause.

(...)

4. Evaluation

(...)

4.3 Concerning the legitimacy of the presented facts

The Labour Court concurs with the judge of First Instance that it is important to know whether or not an agreement existed between the parties which determined the claimant would mainly work for the defendant in Z from 17 January 2000 onwards and work exclusively for the defendant in Z from 10 April 2000 onwards. If proof of such an agreement is established, the persistent failure of the claimant to execute it would consist of a serious shortcoming that would render any professional cooperation between the employer and employee immediately and definitively impossible (article 35, 2nd paragraph, Employment Agreements Act).

It can be concluded that such an agreement existed from the e-mail correspondence between both parties presented in the proceedings, and in particular the e-mails from the claimant.

(...)

The Public Prosecutor states correctly that: 'An e-mail that has no recognized "electronic signature" (which will be the case for all e-mails sent before the Act of 20 October 2000 introducing the use of telecommunication means and the electronic signature entered into force) has the value of a beginning of written proof (L. CORNIL (ed.), "Information technology in the relation between employer and employee", *Actuele voorinformatie arbeidsovereenkomsten*, Ced-Samsom, n° 241, 26 September 2001, p. 141). If, as is now the case, the existence of an agreement can be proven with all legal means, a "regular" e-mail is definitely an element of evidence that needs to be considered.'

The fact that the claimant no longer remembers what he wrote exactly in these e-mails is irrelevant since he does not contest that he wrote them, nor claims that they are forged, and since these e-mails clearly demonstrate that the parties had an oral agreement to terminate the work in Spain completely and definitively starting 1 April 2000. As the (proof) existence of an oral agreement, including employment agreements, can be evidenced by all legal means, the 'short and selective memory' of the claimant does not devalue the evidential value of the e-mails from which the existence of the oral agreement can be concluded.

(...)